UNITED STATES PATENT AND TRADEMARK OFFICE

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09/447,472	11/23/1999	JAMES B. ARMSTRONG	007412.00289	3863

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EXAMINER
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE *3* MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.
- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *23 August 2010*.
2a)☐ This action is **FINAL**.   2b)☒ This action is non-final.
3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-4,6-8,19,21-25 and 27-34* is/are pending in the application.
    4a) Of the above claim(s) _____ is/are withdrawn from consideration.
5)☐ Claim(s) _____ is/are allowed.
6)☒ Claim(s) *1-4,6-8,19,21-25 and 27-34* is/are rejected.
7)☐ Claim(s) _____ is/are objected to.
8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.
10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.
    Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
    Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
    a)☐ All   b)☐ Some * c)☐ None of:
      1.☐ Certified copies of the priority documents have been received.
      2.☐ Certified copies of the priority documents have been received in Application No. _____.
      3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
    * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1)☒ Notice of References Cited (PTO-892)
2)☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3)☐ Information Disclosure Statement(s) (PTO/SB/08)
    Paper No(s)/Mail Date _____.
4)☐ Interview Summary (PTO-413)
    Paper No(s)/Mail Date. _____ .
5)☐ Notice of Informal Patent Application
6)☐ Other: _____ .

DETAILED ACTION

Response to Arguments

1. Applicant's arguments, see Remarks, filed 8/23/10, with respect to the Office Action

   of 6/22/10 have been fully considered and are persuasive. The Office Action of

   6/22/10 has been withdrawn.

(a) Applicant argues that the prior art does not disclose the subject matter of the claims.

   In this Office Action, the Examiner has introduced Kenner (6269394) to teach the

subject matter of the independent claims.

Claim Objections

2. Claim 1 is objected to because of the following informalities:

   In claim 1, line 6, insert a semicolon after the word "assets".

Appropriate correction is required.

Claim Rejections - 35 USC § 102

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form

   the basis for the rejections under this section made in this Office action:

   A person shall be entitled to a patent unless –

   (e) the invention was described in (1) an application for patent, published under section 122(b), by
   another filed in the United States before the invention by the applicant for patent or (2) a patent
   granted on an application for patent by another filed in the United States before the invention by the
   applicant for patent, except that an international application filed under the treaty defined in section
   351(a) shall have the effects for purposes of this subsection of an application filed in the United States
   only if the international application designated the United States and was published under Article 21(2)
   of such treaty in the English language.

4. Claims 1-4, 6-8, 19, 21-25, and 27-34, are rejected under 35 U.S.C. 102(e) as being

    anticipated by Kenner (6269394)

        As for claim 1, Kenner teaches:

        A server configured to distribute requested video assets to requesting user

equipment via the access network (Fig. 1), the server comprising;

        a storage medium comprising a primary storage partition configured to store

frequently requested video assets, and a secondary storage partition configured to store

infrequently requested video assets (col.12, col. 17, lines 50-67);

        a manager for managing migration of video assets, wherein the manager tracks

asset request rates and threshold rates of respective video assets (col.12, col. 17, lines

50-67);

        wherein the manager, in response to an infrequently requested video asset

becoming frequently requested, is configured to select and transmit the frequently

requested video asset to at least one primary partitions of at least one server (Fig. 2;

Col.12, col. 17, lines 50-67);

        wherein the manager, in response to a frequently requested video asset

becoming infrequently requested, is configured to select and transmit the infrequently

requested video asset to at least one secondary partition of at least one server (col.12,

col. 17, lines 50-67)

As for claim 2, Kenner discloses the manager is configured to identify an infrequently requested video asset as becoming frequently requested when the asset request rate crosses above the threshold rate; the manager is configured to identify a frequently requested video asset as becoming infrequently requested when the asset request rate crosses below the threshold rate (col.12, col. 17, lines 50-67).

As for claim 3, Kenner teaches in response to receiving a request for a video asset, the manager is configured to control distribution of the requested video asset from one of the server identified as storing the requested video asset to the requesting user equipment (col. 8, lines 58-67).

As for claims 4 and 22, Kenner discloses wherein a local server and the apparatus is operatively connected to a remote server comprising:
a content manager for receiving the request for the video asset and determining whether the requested video asset is stored locally in the storage of that head-end at which the video asset request is received or stored remotely in the storage of a different head-end (col. 7, lines 62-67, col. 8, lines 58-67);
a stream session manager, for directing the associated server to distribute streams of video assets to subscriber equipment requesting said the video assets (col. 8, lines 58-67, col. 12);
a content session manager for responding to video asset requests forwarded from managers of other ones of the head-ends (col. 8, lines 58-67, col. 12).

As for claims 6 and 27, Kenner discloses wherein a content manager of the local server at which a video asset request is received, in response to determining that a requested video asset is stored locally, is configured to notify the stream session manager to deliver the requested video asset by the local server to the requesting subscriber equipment via the access network (col. 8, lines 58-67).

As for claim 7, Kenner teaches wherein the content manager of a local head-end at which a video asset request is received, in response to determining that a requested video asset is stored remotely in the storage of a remote head-end, instructs the stream session manager of the local head-end to contact the content session manager of the remote head-end (col. 8, lines 58-67).

As for claim 8, Kenner teaches wherein the content session manager of the remote head-end identifies the requested video asset in the storage of the remote head-end, allocates bandwidth for transmitting the requested video asset, and, in response to a determination that the requested video asset is to be provided from the remote head-end to the requesting subscriber equipment via the local head-end, notifies the server of the remote head-end to transmit the requested video asset to the local head-end using the inter-server network (col.12, col. 17, lines 50-67, col. 8, lines 58-67).

Claim 19 contains the limitations of claim 1 and is analyzed as previously

discussed with respect to that claim. Claim 19 additionally calls for the following which

Kenner teaches:

determining an asset request rate for a plurality of video assets stored in each of

a plurality of servers; comparing the determined asset request rates with respective

threshold rates of the plurality of the video assets (Since the server assigns content as

either being one of popular or not so popular, and transfers content based on the

number of user requests, the asset and threshold rates are tracked. col.12, col. 17, lines

50-67, col. 8, lines 58-67);

Claim 21 contains the limitations of claim 1 and is analyzed as previously

discussed with respect to that claim.

As for claim 23, Kenner discloses wherein the identified head-end is the local

head-end coupled directly to the requesting subscriber equipment, the local head-end

provides the requested video asset to the requesting subscriber equipment via the

access network (col. 8, lines 58-67)

As for claims 24, Kenner discloses wherein, the identified head-end is one of the

remote head-ends, the local head-end requests the requested video asset from the

remote head-end and the remote head-end provides the requested video asset to the

local head-end via an inter-server network (col. 8, lines 62-67).

Claim 25 contains the limitations of claims 1 and 4 and is analyzed as previously discussed with respect to those claims.

As for claim 28, Kenner discloses wherein, the identified head-end is one of the remote head-ends, the local head-end requests the requested video asset from the remote head-end and the remote head-end provides the requested video asset to the local head-end via an inter-server network (col.12, col. 17, lines 50-67, col. 8, lines 58-67).

As for claim 29, Kenner discloses wherein the content session manager of the remote head-end identifies the requested video asset in the storage of the remote head-end and allocates bandwidth for transmitting the requested video asset (col. 7, line 62-col. 8, line 2, col. 8, lines 58-67, col. 12).

As for claim 30, Kenner teaches in response to a determination that the requested video asset is to be provided from the remote head-end to the requesting subscriber equipment via the local head-end, the content session manager of the remote head-end notifies the server of the remote head-end to transmit the requested video asset to the local head-end (col.12, col. 17, lines 50-67).

As for claim 31, Kenner teaches in response to a determination that the server of the local head-end is available to receive the requested video asset from the remote head-end, the server of the remote head-end streams the requested video asset to the local head-end over the inter-server network – col.12, col. 17, lines 50-67, col. 8, lines 58-67.

As for claim 32, Kenner teaches wherein the server of the local head-end received the requested video asset from the server of the remote head-end, wherein the received video asset is stored in the storage of the local head-end – col.12, col. 17, lines 50-67, col. 8, lines 58-67.

As for claim 33, Kenner teaches in response to a determination that the requested video asset is to be provided directly from the remote head-end to the requesting subscriber equipment, the content session manager of the remote head-end requests the stream session manager of the remote head-end to allocate bandwidth for providing the requested video asset to the requesting subscriber equipment – col.12, col. 17, lines 50-67, col. 8, lines 58-67.

As for claim 34, Kenner teaches wherein the stream session manager of the remote head-end notifies the server of the remote head-end to stream the requested video asset to the requesting subscriber equipment– col.12, col. 17, lines 50-67, col. 8, lines 58-67.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to SUMAIYA A. CHOWDHURY whose telephone number is (571)272-8567. The examiner can normally be reached on Mon-Fri, 9-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John Miller can be reached on (571) 272-7353. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/John W. Miller/
Supervisory Patent Examiner, Art Unit 2421

/Sumaiya A Chowdhury/
Examiner, Art Unit 2421